

ALBERTA GUARDIANSHIP TRUSTEE SHIP ACT (AGTA)

Summary of Q & A Discussion Sessions with the Office of the Public Guardian Foothills Medical Centre – January/February 2010

	Question/Scenario	Answers –
1	<p>Patient arrives in ER and requires CT/MRI/Interventional diagnostics and is unconscious. Consent is required for DI and there may not be two physicians in the area and no RN?</p>	<ul style="list-style-type: none"> ▪ Have you considered Specific Decision making and contacting a family member under the ranked list? ▪ Emergency Health Care under the AGTA, Section 101 (2) provides for emergency health care procedures when there is serious concern about the well-being of the adult and the adult is not able to give consent. In addition, Section 101 (3) stresses that “where practicable” the physician will obtain the written opinion of a 2nd physician or health care provider. ▪ Proceed with the emergency provisions with one physician (2nd physician is where practicable. Time is the essence and health care appears necessary to find out why adult is unconscious. Important to use commonsense and look to best practice used before. ▪ There is no definition of emergency in AGTA and this was deliberate so as not to constraint physicians clinical judgment in the situation. AGTA provides guidance by the criteria in 101(2).
2	<p>Patient in ICU required multiple surgical, interventional procedures with multiple physicians, for which consent is required. Patient is brain injured. No two physicians are typically in the unit, nursing is the alternate but is concerned about:</p> <ol style="list-style-type: none"> 1) determination of emergency 2) liability 	<ul style="list-style-type: none"> ▪ The AGTA does provide a “general” outline of what constitute an emergency, Section 101(2)a but the interpretation of what constitutes an emergency is a medical judgment which is situation based. Liability is not specifically addressed in this section of the Act but concerns about liability need to be addressed by AHS. The spirit of the Act is that decisions are made in “good faith” and for the well-being of another. ▪ The Act will protect those who act in good faith – (in the best interest of the person) – AHS can seek their own legal opinion if concerned about how to proceed due to concern regarding liability. ▪ The 2nd opinion of the nurse in the emergency situation is simply a confirming that health care is necessary and the adult can’t provide consent. It is not expected that the nurse is completing a capacity assessment. The treating physician will be proceeding to provide treatment based on their clinical judgment on s/he believes is necessary to preserve life and alleviate severe pain. It is expected that all health care providers including nurse would be acting in good faith and diligently.

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3	Patient arrives to the OR requiring emergent surgery, family has signed the consent and left the facility, but no other forms have been completed determining patient unable to make decision or family member acknowledging the responsibility.	<ul style="list-style-type: none"> ▪ Specific decision-making is the tool in the AGTA which provides for a family member being able to give consent for a medical procedure when the adult is not capable. Given that the surgery is emergent, it may be likely that it could proceed under emergency health care. ▪ Again this is a judgment call on what is available in the moment, suggest try reaching family or just let the consent they provided stand(these situation often occurred under Dependant Adults Act (the old legislation) and we did not interfere with the process the doctor used). ▪ Best practice approach may be that it would be seen as an emergency and just let situation unfold (leave it alone) based on physician clinical judgment and when other consents needed, suggest follow Specific decision making could be used.
4	Patient, elderly and due to injury confused, arrives to the OR for urgent surgery (within 24 hours). No consent is signed. Second physician refuses to sign, nursing refuses as well.	<ul style="list-style-type: none"> ▪ Specific Decision Making could be used. ▪ Important to understand why physician and nurses are refusing to sign. Do they believe that the health care is not necessary or that the adult can consent? This criteria is that when there is two physicians or a second health care provider available, there should be agreement in the treatment necessary. It is a different scenario if the physician did not have anyone else to consult or receive the 2nd opinion such as in situations in remote areas. ▪ The Act does comment on this situation under Section 101 (3)b. Specifically, the Act states a physician MAY NOT proceed to provide the emergency health care unless the 2nd physician/nurse agrees that it is an emergency and that the adult is not capable of giving a consent. ▪ Hospital Ethics Committee? If physicians can't agree on a procedure –
5	What is the process when someone is contesting their capacity assessment or the Granting of guardianship, how long does it take? What happens in the meantime?	<ul style="list-style-type: none"> ▪ Act speaks to individuals who refuse to participate in Capacity Assessment that other evidence as to their capacity may be taken into consideration – ▪ As for individual deemed to lack capacity wishing to appeal, they are entitled to due process; however, if a guardianship order is before the courts and the Review Officer has commented on the client's objection – this matter will be decided upon by the court... ▪ Any interested person including the adult can request a hearing where they could bring other evidence to the Judge's attention. ▪ If the person is refusing the assessment, an application could be made under Section 104 asking the Court to make an order for the capacity assessment to be completed. If the adult still refused an application under Section 105 could be considered where the Judge could make a determination of incapacity based of other evidence (affidavits from others, medical evidence of stroke, Alzheimer's , etc) ▪ Temporary guardianship could be used in this situation if there was a significant risk to the adult and the Court was satisfied with the evidence. Temporary Guardianship orders

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		<p>can be granted within a week. Typical guardianship application is expected to take 2 months.</p> <ul style="list-style-type: none"> ▪ Specific decision-making may also be tried as long as adult is not refusing the informed consent assessment. If the adult disputes the assessment under Specific Decision-making they have the right to ask for a full capacity assessment or a Court Review under Section 96 or 97. ▪ More information might be required to answer this question fully...
6	Can the one time decision making be used to start the LTC process?	<ul style="list-style-type: none"> ▪ Yes ; however, the individual's long term prognosis should be considered – if the individual will require ongoing surrogate decision making support then decision making options under the AGTA should be considered and this application process (i.e.; co-decision making or guardianship) can be applied for while the patient awaits transfer. ▪ Specific decision-making provision allow for the temporary admission to a residential facility such as a LTC. Temporary is defined in regulations is meaning 6 months. During that time, it would be important to see if the adult has regained their capacity to make decisions on where they live and could possibly make a personal directive. If the adult's capacity continues to very be poor, guardianship should be considered
7	Has there been any discussion about implementing a fee for this process regardless where the assessment is conducted. My understanding is if the application/assessment is completed in the community family have to pay an assessor, but if in hospital the costs are covered as the in staff psychologist maybe completing the assessment.	<ul style="list-style-type: none"> ▪ Under the regulations Section 9 (1) A Capacity Assessor may charge a fee for a capacity assessment and report up to a maximum of \$500.00 regarding capacity on Personal matters or Financial matters or \$700.00 if the capacity assessment relates to both areas. ▪ Except where the fee for an assessment is paid by the Minister (under Section 10) the court may allow for a higher fee based on complexity ▪ It is expected that if the capacity assessor is doing it as part of their employment with AHS, they will not be charging the adult the prescribed fee. ▪ There is a Capacity Assessment Advisory Committee composed of all the Colleges, Provincial Health Ethics Network (PHEN) and our Ministry. Issues such as fees and practices of capacity assessors are being discussed at this level. A full evaluation of the new capacity assessment process will be conducted within the next two years to make sure the model meets Albertans needs. Any feedback and suggestions are welcome. ▪ OPG also has a Capacity Assessment policy analyst who provides policy leadership on this new model. His name is Rod Urquijo and he can be reached by calling our 1-877-427-4525 toll free line.
8	Elderly old woman who has a mental health disorder, brought to hospital by CPS confused and combative on admission, Formalized under the mental health act. Husband wants pt to	<ol style="list-style-type: none"> 1. She has been assessed as incompetent under the Mental Health Act and is a formal patient. Recommendation is for a secure DAL. 2. Son is known drug abuser with mental health issues. Does husband also live in the

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	return home. Son (with whom patient was living prior to admission) has substance abuse and mental health issues no other family member willing to assume guardianship as patient now clearly lacks capacity. Significant family dysfunction and needs placement in a secure DAL facility.	<p>home? Is husband or son expressing wish to be guardian? Is there evidence of abuse?</p> <p>3. No straightforward answer to this situation as it is complex as are many of the situations we all deal with.</p> <ul style="list-style-type: none"> ▪ Recommended Approach: ▪ Team meeting with family to identify all the concerns. Is she cared for in the home? At risk of abuse/neglect? The answer to this one lies in the exploration of all the issues. Each situation will vary ▪ The OPG can be contacted to explore/discuss the issues with the woman, her medical team, and her family. Referral to OPG to act as guardian is there is no one else suitable or willing; again this is a last resort; however, if a family member steps forward and would like to apply for guardianship – that is their right – all parties served on the guardianship notice will have the potential to object to the application, if concerns exist. ▪ New applicants will undergo screening in the form of a background check.
9	Patient with subarachnoid hemorrhage who is unable to consent for 1-3 weeks yet procedures need to be complete requiring consent. Timeframe too short to get temporary guardianship approved.	<ul style="list-style-type: none"> ▪ Recommend using Specific Decision Maker option or 2 physician consent under Emergency Health Care. ▪ Also temporary guardianship can be obtained with a week if there is an urgent need.
10	The act has made it complex for physicians to make decisions. What was wrong with the old act	<ul style="list-style-type: none"> ▪ This Act replaces the 30 year old Dependant Adult's Act. The new act was written for Albertans so that there is a continuum of decision making options available ranging from least restrictive (supported decision making) to most restrictive (full guardianship). As for bringing nurses in to sign off on Emergency Health Care – the intent was to provide another health care practitioner when there is not a 2nd physician available –
11	What are the ramifications to the nurse who doesn't want to sign (not comfortable signing) – does physician go ahead and do the surgery anyway or does patient not get surgery – what if patient dies then went – who's liable if they are in disagreement “You've introduced another level of complexity” – in a physician's decision making process – Why? (Doctor's comment)	<ul style="list-style-type: none"> ▪ The Act does comment on this situation under Section 101 (3)b. Specifically, the Act states a physician MAY NOT proceed to provide the emergency health care unless the 2nd physician/nurse agrees that it is an emergency and that the adult is not capable of giving a consent. Liability question will need to be discussed with AHS lawyers.

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12	<p>A patient arrives at an out-patient clinic for an invasive procedure requiring consent. The appointment has been booked by his/her guardian but the guardian has not accompanied the patient. Consent is normally obtained when the patient arrives for surgery. What are our options?</p>	<ul style="list-style-type: none"> ▪ Have the physician phone the guardian and obtain verbal consent. ▪ When appointments are being booked by guardians, ask whether they will be accompanying the patient. If not, send the consent form to them for signature and have them send it back and include a phone # where they can be reached the day of the procedure. Then have the physician call the guardian to discuss any questions they have prior to physician sign off.
13	<p>Can a guardian or specific decision-maker consent to the removal of tissues and organs?</p>	<p>It depends. Have the wishes of the patient regarding tissue and organ donation been written in a Personal Directive. Is there a signed donor card? What are the wishes of the family? What requirements are stated in AHS policy?</p> <p>If the patient is still living:</p> <ul style="list-style-type: none"> • The agent named in the personal directive cannot consent to removal of tissues and organs unless the "...personal directive contains clear instructions that enable the agent to do so". • The guardian would be bound by the Represented Adult's wishes prior to the loss of capacity. • A specific decision-maker is prohibited from consenting to transplantation of tissues. <p>When the patient dies, the guardianship order is no longer valid and consent for removal of tissues or organs for donation must be obtained in accordance with AHS policy.</p>